

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

SUNSHINE ACT MEETING

Washington, D.C.
Thursday, April 27, 2010

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BURT CHILTON

5 MICHAEL V. DUNN

6 SCOTT D. O'MALIA

7 JILL E. SOMMERS

8 Staff:

9 RICK SHILTS

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P R O C E E D I N G S

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2 CHAIRMAN GENSLER: I'd like to call to
3 order this meeting of the Commodity Futures
4 Trading Commission, and good morning. The
5 Commodity Futures Trading Commission is meeting
6 today to consider whether 24 specific contracts
7 offered for trading on a number of exchanges, the
8 Intercontinental Exchange, Natural Gas Exchange,
9 or the Chicago Climate Exchange perform
10 significant price discovery functions.

11 I'd like to start by thanking my fellow
12 Commissioners and our staff for being here today.
13 This is our third public meeting this year. I
14 hope to continue holding more of these meetings
15 out in the open. And though over-the-counter
16 derivatives have not been regulated in the United
17 States or elsewhere, Congress did take significant
18 steps in 2008 in the Farm Bill towards closing
19 what was then called the Enron loophole that
20 allowed for trading in energy markets outside of
21 regulation.

22 That legislation required the CFTC to

1 determine whether certain contracts traded on what
2 was called exempt commercial markets, what I'll
3 refer to as ECM's, markets that were really not
4 regulated, serve the significant price discovery
5 function in either the regulated futures markets
6 or in the cash markets. So if the CFTC makes such
7 a determination, those markets would be subject to
8 core principals and self-regulatory functions,
9 somewhat similar to full exchanges, but not
10 identical, to protect the public from fraud,
11 manipulation and other abuses.

12 In essence, what Congress did was built
13 upon the important work by an act; in essence,
14 what Congress did was, start the reform efforts.
15 I think it's essential now that Congress build
16 upon this and have broad reform of the full
17 over-the-counter derivatives marketplace. And the
18 coincidence of this hearing, I do want to say that
19 the Senate Agriculture Committee and the Banking
20 Committee has been working towards broad reform.
21 They put out a package last night on
22 over-the-counter derivatives.

1 I support their strong legislation. It
2 would regulate derivatives dealers with capital,
3 margin, business conduct, standards, record
4 keeping and reporting. It would also promote
5 transparency to the markets by, for the first
6 time, mandating that standardized transactions
7 trade on swap execution facilities or exchanges.
8 And it would also importantly lower risk to the
9 American public and protect them against future
10 bailouts by moving the standardized derivatives
11 into well regulated clearinghouses. This inner
12 connectedness is really at the core, and severing
13 the inner connectedness of over-the-counter
14 derivatives at the core of trying to protect
15 against future taxpayer bailouts.

16 But today we just are talking about
17 these 24 contracts. And each of the proposed
18 contracts were listed in the Federal Register. I
19 want to thank the public for submitting comments
20 on the proposed determinations. In addition to
21 what we're doing here today, there were 17 other
22 contracts that we'll consider in the coming

1 months. I know the Commission staff is still
2 working diligently to review those, as well.

3 The Farm Bill's significant price
4 discovery provisions did close what was then
5 called a loophole that had existed for about a
6 decade, called the Enron loophole, which had
7 excluded the CFTC from regulating trading in
8 certain energy markets. And Congress recognized
9 the danger of such a loophole and what it posed to
10 the American public.

11 Two years later, as Congress debates
12 essential reform in the over-the-counter market,
13 we must ensure not to make a similar mistake.
14 Once again, though, I must tell you that certain
15 parties have sought exemptions from regulation in
16 the energy market, and particularly in the natural
17 gas and electricity markets. But I think the
18 American public needs us to be diligent and learn
19 from our past lessons. We should resist efforts,
20 whether they come from Wall Street or whether they
21 come from industry to exempt specific classes of
22 contract from reform.

1 History really demonstrates the bright
2 line of statutory exemptions. Granted, at one
3 point, with good intentions, often have unintended
4 consequences later, and that's because markets
5 evolve, and they evolve rapidly. What might seem
6 carefully crafted at one point then leaves problem
7 filled loopholes later. I think that's really the
8 lesson that we learn from exempt commercial
9 markets.

10 They were created at one point when, as
11 we'll learn from Mr. Berkovitz's testimony, they
12 were really small and in some ways inconsequential
13 markets, and then they grew to be very significant
14 markets. I hope that we can learn from that and
15 not do the same in this legislation moving
16 forward.

17 We determined one contract to be a
18 significant price discovery contract last July,
19 and that authority has been exercised. Today
20 we'll consider 23 additional natural gas contracts
21 and one contract in the coreman markets. I
22 believe staff is recommending that seven contracts

1 be identified as significant price discovery
2 contracts and 17 not be. So I look forward to the
3 General Counsel, Dan Berkovitz, and our Director
4 of Market Oversight, Rick Shilts, on their
5 recommendations. But before that, I'm going to
6 turn it over to Commissioner Dunn and any opening
7 remarks.

8 COMMISSIONER DUNN: Thank you, Mr.
9 Chairman, and let me commend you on your
10 continuing commitment to have these types of
11 public meetings. I think it's extremely important
12 that the public industry see how we operate, and I
13 appreciate your effort here.

14 When the initial legislation creating
15 significant price discovery, or SPDC, was enacted,
16 I was under the impression that there might be a
17 half dozen contracts that would fall in this
18 category. The 90 plus ECM contracts initially
19 identified as potential SPDC and the subsequent
20 in-depth analysis in the Federal Register release
21 of 41 of these contracts, frankly, took me by
22 surprise.

1 I commend the staff on their diligence
2 in carrying out the provisions of the SPDC
3 legislation and thank the public for their
4 comments in the Federal Register release. During
5 my briefing on the SPDC proposal we are
6 considering today, I was struck by the time and
7 effort expended by the CFTC staff to get us to
8 this point. ECM's were created by the CFMA of
9 2000, and the SPDC determination was mandated by
10 the CFTC Reauthorization Act of 2008.

11 If a local trader at an exchange had
12 fallen asleep in 2000 and awoke today, that person
13 would be hard pressed to recognize the future
14 industry. That trader would probably find himself
15 in an abandoned trading pit. The contract he
16 traded would likely have migrated to an electric
17 platform, globally accessed by multi billion
18 dollar hedge funds through co-located algorithm
19 driven high frequency trading strategies.

20 The exchange itself in all likelihood
21 would be a publicly traded company closely tied to
22 a clearinghouse whose membership is made up of

1 closely entwined global financial institutions.

2 Many of the changes in the future
3 industry have occurred since I was sworn in as a
4 Commissioner in December of 2004. Since that
5 time, we have also witnessed a financial meltdown
6 that has made us acutely aware of some of the
7 inadequacies of our current regulatory system.
8 Despite the fact that the CFTC has made structural
9 changes since the adoptions of the principal base
10 regulatory regime in 2000, this agency has simply
11 been outpaced by an ever involving industry and
12 consistently asked to do more with less by
13 Congress. Today, while we are still working
14 through the congressional mandates of our 2008
15 reauthorization, legislation that calls for more
16 regulatory control will place greater burdens on
17 the agency as working its way through Congress.

18 Unfortunately, I do not know if we're
19 ready for what will be asked of us. My fear is
20 that the trader who fell asleep ten years ago and
21 woke up unable to recognize the modern futures
22 industry was easily able to identify the CFTC,

1 because we haven't changed that much.

2 I believe it is time for the CFTC to
3 undertake a complete restructuring to put it more
4 in line with today's regulatory needs. We need to
5 accomplish a business reengineering of the agency
6 that reflects the demands of what Congress and the
7 public expect of a futures regulatory agency.

8 Greater emphasis needs to be placed on
9 such issues as consumer protection, global
10 harmonization, regulatory information sharing,
11 risk assessment, high frequency algorithm trading
12 strategies, and inner connectivity of industry
13 institution. As Congress works on new
14 legislation, we must begin to think about
15 structural changes at the agencies to handle the
16 regulation of swaps. We will need to develop the
17 technical capabilities that will be needed for
18 today and the future. We must begin planning now
19 for the oversight that we will need to regulate
20 exchanges in clearinghouses that will be offering
21 services to accommodate swaps and products as yet
22 undeveloped.

1 Now is the time to take a look at the
2 structure to CFTC. Now is the time to determine
3 what it will take to become an effective regulator
4 in a modern and ever changing future industry.

5 Again, I want to thank the staff for the
6 work on these contracts and for helping me realize
7 what needs to be done in the future to ensure that
8 we remain an effective regulatory agency. Thank
9 you.

10 CHAIRMAN GENSLER: Thank you,
11 Commissioner Dunn. Commissioner Sommers.

12 COMMISSIONER SOMMERS: Thank you, good
13 morning. The appropriate regulatory treatment of
14 contracts traded on exempt commercial markets has
15 been an important and evolving issue for the
16 Commission from the time Congress authorized their
17 existence in 2000. And initially ECM's were
18 subject to basic record keeping and reporting
19 requirements for contracts averaging five trades
20 per day or more. The Commission could demand the
21 production of additional information under its
22 special call authority when appropriate. The

1 Commission was also authorized to determine that
2 an ECM contract performed a significant price
3 discovery function for an underlying cash market.

4 Such a finding did not, however, trigger
5 any self-regulatory responsibilities for the ECM
6 or any additional oversight authority for the
7 Commission. In addition, while the information
8 received from ECM's was somewhat useful to the
9 Commission, it was not transmitted in a form that
10 could facilitate regulatory oversight such as our
11 large trader reporting system does.

12 As ECM markets developed over the past
13 decade, the Commission recognized that additional
14 oversight authorities were needed or potentially
15 needed for price discovery contracts traded on
16 ECM's, particularly those linked to fully
17 regulated contracts traded on designated contract
18 markets. The Commission found that a similar
19 level of regulation was appropriate for these
20 contracts, not only to give both the Commission
21 and the ECM proper policing authority, but to
22 eliminate possible competitive disparities that

1 could unfairly advantage an ECM listing a contract
2 that competed with a DCM contract, but was not
3 subject to the same regulatory restrictions.

4 In 2007, the Commission recommended that
5 Congress amend the Commodity Exchange Act to
6 correct this gap in the law, which Congress did in
7 the 2008 Reauthorization Act. None of the 24
8 contracts the Commission will vote on today are
9 linked to or serve as look-alikes for the
10 contracts traded on a DCM. Nonetheless, staff
11 recommends that the Commission declare seven of
12 these contracts as significant price discovery
13 contracts.

14 Staff has determined that these
15 particular contracts are referenced or consulted
16 on a frequent or recurring basis by cash market
17 participants when pricing transactions, and thus
18 meet the material price reference criterion for
19 significant price discovery determination.

20 Comments filed during the public comment
21 process have questioned, among other things,
22 whether these contracts are liquid enough to serve

1 as true price discovery vehicles. While that may
2 be a debatable point, I agree with the staff's
3 analysis that not all of the price discovery
4 criteria set forth in the statute must be present
5 to declare a contract a significant price
6 discovery contract, and that the material price
7 reference element is sufficient for the seven
8 contracts that staff recommends to the Commission
9 to declare to be price discovery contracts today.

10 I will close by saying that I really
11 appreciate all the work that the staff has done
12 here at the CFTC, especially DMO staff initially
13 looking at these 90 contracts as potentially being
14 SPDC contracts, and I appreciate the hard work and
15 look forward to hearing the presentation today.
16 Thank you.

17 CHAIRMAN GENSLER: Thank you,
18 Commissioner Sommers. Commissioner Chilton.

19 COMMISSIONER CHILTON: Thanks, Mr.
20 Chairman. I wasn't going to say anything today
21 because this is a fairly mechanical thing,
22 although I very much appreciate doing it, and I

1 commend you, Mr. Chairman, I think it's a good
2 thing to do these more often, as all of us have
3 talked about in the past. But, you know, what you
4 say here in this small room may not matter, but,
5 you know, we're here for a reason, and even though
6 you may not be heard, sometimes it's important to
7 just say something that you believe in. And I was
8 thinking as I was coming in today about what's
9 going on on Capital Hill, and all of us have
10 worked up there, and I certainly hope that
11 individual senators have their issues taken care
12 of and they get on with this, because if there's
13 nothing that they do, we are doomed to repeat
14 these failures that have happened. If there's no
15 action on regulatory reform, some of the things
16 that both the Chairman and Commissioner Dunn
17 talked about, I think we could be in a world of
18 hurt again.

19 One of the things that we've all
20 probably dealt with, the five of us, when you're
21 on Capital Hill, the things that tend to motivate,
22 that tend to move legislation forward, are

1 disasters.

2 There's an old saying that mine safety
3 rules are written with the blood of miners. And
4 we had that devastation in West Virginia with 29
5 miners on April 6th. And not to put it in the
6 same category, the financial regulatory reform as
7 peoples' lives, but we've had a real disaster with
8 financial markets, and peoples' pension funds, and
9 college kids funds, and people making decision
10 about gas or food, et cetera, et cetera. It is an
11 economic disaster that we've had, and I just hope
12 that Congress, right now the Senate, gets on with
13 it. I want individual -- to be taken care of and
14 the amendment process to go forward, but the
15 status quo is unacceptable, and I sure hope they
16 do it. What we're doing today takes care of part
17 of it, it moves us in that direction, it doesn't
18 deal with credit default swaps, it doesn't deal
19 with some of the things that brought our economic
20 financial circumstances to the edge of the cliff.

21 Some would say, you know, we did a
22 Thelma and Louise and went off. So I'm hopeful

1 that we can do these things today, but more
2 importantly, that Congress gets with it and gives
3 us even greater oversight to protect consumers and
4 ensure efficient and effective markets in the
5 future. Thanks.

6 CHAIRMAN GENSLER: Thank you so much,
7 Commissioner Chilton, Thelma and Louise, too.
8 Commissioner O'Malia.

9 COMMISSIONER O'MALIA: Good morning,
10 thank you. I want to thank all the staff that
11 have been involved in preparing for today's
12 meetings, in processing the reams of paperwork
13 involved in the significant price discovery
14 contract determinations. As Commissioner Dunn
15 noted, this project has consumed untold staff
16 hours and significant resources to analyze over 90
17 contracts, of which seven are recommended here
18 today. From my perspective, it is of paramount
19 importance that the market understands clearly the
20 process for determining what constitutes a
21 significant price discovery contract. The act
22 specifies four factors that the Commission must

1 consider in determining -- in its determination
2 price linkage, arbitrage, material price reference
3 and material liquidity.

4 Congress left the decisions regarding
5 the definition and relevance of each factor up to
6 the CFTC to decide. The guidance provides insight
7 as to how the agency applies and defines these
8 factors. But I question whether the criteria are
9 clear and transparent enough for the marketplace.

10 We must be as transparent as possible
11 about the process for making our determinations.
12 And I hope through today's presentations and
13 questions, staff will be able to explain with
14 reliable certainty what these determinations mean
15 and which contracts will be considered SPDC.
16 Thank you again for all your hard work. This is a
17 very difficult process to go through, each and
18 every one of these things. I'm sure we've learned
19 a lot about these contracts and what is a
20 significant price discovery contract, and I look
21 forward to your presentations.

22 CHAIRMAN GENSLER: Thank you,

1 Commissioner O'Malia. Thank you to all the
2 Commissioners. And so I think I'm turning it over
3 to General Counsel Berkovitz first, who's going to
4 give us a little bit of legal background on this.
5 There is a written statement both from General
6 Counsel Berkovitz and Director of Market Oversight
7 Shilts that hopefully is on our web site, for
8 anyone listening in, but available to the press,
9 as well, and you'll summarize. Thank you.

10 MR. BERKOVITZ: Thank you, Mr. Chairman
11 and Commissioners. My statement briefly discusses
12 the legislative history of the provisions in the
13 Commodity Exchange Act related to significant
14 price discovery contracts.

15 This history includes the creation of a
16 new type of market, the exempt commercial market
17 under the Commodity Futures Modernization Act, the
18 evolving role of ECM's in the energy derivative
19 markets, leading to an increased need for
20 regulation and oversight of ECM's, and the CFTC
21 Reauthorization Act of 2008, which provided the
22 Commissioner with authority to regulate the

1 trading of contracts on ECM that perform a
2 significant price discovery function, these are
3 called SPDC for short.

4 I will also describe briefly the
5 Commission's statutory responsibilities with
6 respect to determining which contracts are SPDC.
7 The Commodity Futures Modernization Act, or CFMA,
8 established a tiered structure for regulating
9 commodity trading. The degree of regulation
10 depended upon the type of commodity, the type of
11 market, and the size and degree of sophistication
12 of the participants in the market.

13 The CFMA placed one of these tiers in
14 Section 2H3 of the CEA. Under Section 2H3, the
15 trading of contracts and exempt commodities on an
16 electric trading facility by large, sophisticated
17 parties, known as eligible commercial entities,
18 was exempt from the provisions of the CEA, except
19 for the anti-fraud and anti-manipulation
20 authorities.

21 An exempt commodity is any commodity
22 that is not an excluded commodity or an

1 agricultural commodity. Primarily, examples of
2 these include energy commodities, metals, and
3 carbon instruments.

4 As the Chairman noted and Commissioner
5 Dunn have noted, at the time the CFMA was enacted,
6 most ECM's were simple trading platforms. The
7 first ECM's did not offer centralized clearing.
8 Early ECM contracts were not linked to contracts
9 listed on designated contract markets known as
10 futures exchanges. In just a few years after the
11 passage of the CFMA, however, trading grew
12 exponentially in the OTC market, especially in the
13 natural gas and other energy derivatives markets.
14 ECM's dramatically increased their trading volumes
15 and took on many attributes of the DCM. Some
16 ECM's began to offer look alike swap contracts
17 that were economically equivalent to futures
18 contracts and whose settlement prices were, in
19 fact, linked to the settlement prices of their
20 exchange traded counterparts.

21 Some ECM's also started to offer
22 centralized clearing for their contracts, an

1 option widely utilized by their customers. This
2 increased trading activity and clearing on ECM's
3 raised concerns whether the Commission had
4 adequate authority to protect the markets and the
5 price discovery process from manipulation and
6 other market abuse.

7 These concerns increased following the
8 collapse of the Amaranth hedge fund, which was an
9 extraordinarily large trader in both natural gas
10 futures contracts on the regulated NYMEX market,
11 and the natural gas swaps on the then unregulated
12 intercontinental exchange, ECM, and which
13 frequently traded between the two markets.

14 As a result of this growing concern, the
15 Commission recommended and the Congress enacted
16 legislation to regulate contracts trading on an
17 ECM that perform a significant price discovery
18 function. The CFTC Reauthorization Act of 2008,
19 which was included as part of the 2008 Farm Bill,
20 added a new section, 2H7, to the CEA to regulate
21 significant price discovery contracts traded on an
22 ECM.

1 Specifically for contracts that are
2 determined by the Commission to be SPDC or perform
3 a significant price discovery function, the act
4 requires that the ECM comply with nine core
5 principals. These core principals include the
6 obligation to adopt and maintain position and
7 accountability limits, monitor trading to prevent
8 manipulation and price distortion, provide for
9 emergency authority to liquidate open positions,
10 and to suspend trading in SPDC, and publish daily
11 trading information on price and volume.

12 The Reauthorization Act directed the
13 Commission to review contracts traded on ECM's to
14 identify those that serve a significant price
15 discovery function according to several criteria.
16 These, as Commissioner O'Malia noted, include
17 price linkage, the extent to which the contract
18 uses or otherwise relies on a daily or final
19 settlement price or other major price parameter of
20 a contract traded on a futures exchange or other
21 facility regulated by the Commission. Arbitrage,
22 the extent to which the price for the contract is

1 sufficiently related to the price of a contract
2 traded on another regulated facility so as to
3 permit market participants to effectively
4 arbitrage between the markets. Material price
5 reference, the extent to which, on a frequent and
6 recurring basis, bids, offers or transactions in a
7 commodity are directly based on or are determined
8 by referencing or consulting the prices generated
9 by contracts being traded or executed on the ECM.

10 And the fourth factor, material
11 liquidity, the extent to which the volume of
12 contracts in a commodity being traded on the
13 electronic trading facility is sufficient to have
14 a material effect on other contracts traded on a
15 regulated facility.

16 Not all criteria must be present to
17 support a determination that a particular contract
18 performs a significant price discovery function.
19 The contract may be determined to perform a
20 significant price discovery function even if one
21 or more criteria may be applicable to a particular
22 contract.

1 Moreover, the statutory language neither
2 prioritizes the criteria nor specifies the degree
3 to which a SPDC must conform to the various
4 criteria. The legislation directed the Commission
5 to issue rules implementing the new ECM
6 provisions. In March, 2009, the Commission issued
7 a final rule to amend Part 36 of the Commission's
8 regulations to specify the criteria on which the
9 Commission will rely in making a determination
10 that a contract is a SPDC.

11 It also set forth the factors that will
12 trigger an ECM's obligation to notify the
13 Commission of a possible SPDC. The procedures the
14 Commission will follow in reaching its
15 determinations whether a contract is a SPDC, and
16 the procedures, standards and time tables by which
17 an ECM with a SPDC must demonstrate compliance
18 with the core principals.

19 The 2000 Reauthorization Act also
20 required the Commission to review and issue
21 determinations regarding the contracts traded on
22 electric trading facilities in operation as of the

1 effective date of the final rule. The Commission
2 is meeting today to make determination pursuant to
3 the statutory requirement.

4 In particular, the Commission is
5 consider the staff's recommendations with respect
6 to whether a number of natural gas, electricity
7 and other commodity contracts traded on ICE and
8 the natural gas exchange constitute SPDC. Mr.
9 Shilts will describe the process used by the staff
10 to arrive at its recommendations, as well as the
11 basis for those recommendations. The ultimate
12 responsibility for making these determinations of
13 whether these contracts constitute SPDC rests with
14 the Commission. In making its determination, the
15 Commission may assign such weight as it determines
16 appropriate to the factual evidence presented by
17 the staff. The Commission may also consider and
18 weigh the public comments received on this matter.

19 As previously mentioned, not all of the
20 statutory criteria must be present, and neither
21 the statute nor the Commission's regulations
22 dictate the relative weights afforded the various

1 criteria.

2 In the guidance on this matter, in
3 Appendix A to Part 36, however, the Commission
4 indicated that certain factors by themselves such
5 as the price linkage factor may not be sufficient
6 to support a finding of a SPDC. The guidance also
7 states, however, that there is "no mechanical
8 checklist or formulaic analysis" in considering
9 these factors.

10 Upon making its determination, the
11 Commission is required to issue an order
12 explaining its determination. If the Commission
13 determines that the contract performs a
14 significant price discovery function, then the ECM
15 will have to take a number of steps to regulate
16 these contracts as SPDC, as Mr. Shilts explains in
17 his statement. If the Commission determines that
18 the contract does not perform a significant price
19 discovery function, then there is no further
20 action to be taken by either the Commission or the
21 ECM. Thank you, Mr. Chairman.

22 CHAIRMAN GENSLER: Thank you, General

1 Counsel Berkovitz. Mr. Shilts.

2 MR. SHILTS: Good morning. As has been
3 mentioned, in determining whether an ECM contract
4 should be declared a, I'm going to use the term
5 SPDC here, through a significant price discovery
6 contract, Congress established four criteria,
7 which have been mentioned, price linkage,
8 arbitrage, material price reference and material
9 liquidity. And as Dan mentioned, because these
10 criteria do not lend themselves to a mechanical
11 checklist, the Commission provided guidance as to
12 how it expects to apply -- the staff to apply the
13 criteria.

14 Not all the criteria need to be present
15 for a SPDC determination. The criteria in some
16 cases may be interrelated. Generally speaking,
17 the arbitrage and price linkage criteria attempt
18 to identify contracts traded on a ECM that are
19 essentially look alikes or linked to a contract on
20 a DCM and have sufficient trading activity to
21 effect prices on the DCM. The material liquidity
22 criterion also attempts to identify contracts

1 traded on an ECM, but have the potential to effect
2 prices on another market.

3 The material price reference criterion
4 essentially focuses on contracts that serve a
5 unique pricing function for a particular location,
6 product or quality in the industry.

7 Consistent with Congress' direction, the
8 Commission rules provide for an annual review of
9 ECM contracts to evaluate whether any of these
10 contracts should be SPDC. Staff recommendations
11 today are the results of its initial evaluation of
12 all the ECM contracts.

13 As Dan mentioned, the Commission rules
14 establish a process by which ECM determinations
15 are made. There's an announcement in the Federal
16 Register, when the analysis is complete, the
17 Commission issues an order explaining its
18 determination, whether the contract is or is not a
19 SPDC.

20 Following a Commission determination of
21 a contract as a SPDC, the ECM must demonstrate
22 compliance with the core principals within 90 days

1 for the first SPDC and within 30 days for
2 subsequent SPDC's. The first contract that the
3 Commission determined to review for a SPDC was the
4 Henry Financial LD1 fixed price contract traded on
5 ICE. The Commission issued an order finding that
6 contract was a SPDC, and ICE was required to
7 demonstrate compliance with the core principals.

8 Similar to the Commission's process for
9 reviewing a DCM application, and interdivisional
10 team was assembled to assess ICE's compliance with
11 the core principals. Staff evaluated the ICE
12 rulebook, compliance manual, participation
13 agreement, and related procedures adopted by ICE
14 to enable it to comply with the core principals.

15 Staff observed an on sight demonstration
16 in Atlanta of the market and trade practice
17 surveillance processes and separately reviewed
18 ICE's technology, security, test procedures and
19 business continuity.

20 In general, staff found that ICE had
21 fully demonstrated compliance with the ECM/SPDC
22 core principals. As a registered entity, ICE

1 would -- the staff would review ICE as part of its
2 regular rule enforcement review process to ensure
3 its continued compliance.

4 Staff now has focused on remaining ECM
5 contracts. The Commission issued Federal Register
6 releases announcing its intent to undertake
7 further analysis with respect to 41. That has
8 been mentioned; 23 of these relate to natural gas
9 traded on ICE in the natural gas exchange, 16
10 relate to electricity, one is a refined petroleum
11 product, and one is a carbon financial instrument
12 cash contract.

13 We have completed our reviews of the
14 natural gas and carbon financial contract and have
15 made recommendations that the Commission is
16 considering today. Staff's complete analysis and
17 recommendations are set forth in the Federal
18 Register releases.

19 The 23 natural gas contracts under
20 consideration today are listed by two ECM's, the
21 intercontinental exchange, ICE, and natural gas
22 exchange. ICE is an Atlanta based company that

1 provides a forum for trading over-the-counter
2 derivatives and energy products, while the NGX is
3 an Alberta based company, is an energy exchange
4 providing physical clearing and settlement for
5 natural gas trades.

6 The natural gas contracts can be
7 classified in two categories. The largest group
8 includes 17 basis contracts, where by basis we
9 mean, refers to the difference in the NYMEX
10 settlement price for natural gas at the Henry Hub
11 and the value of natural gas at another production
12 storage or consumption center in the U.S. or
13 Canada. Staff believes that seven of these
14 contracts meet the SPDC criteria. Staff believes
15 that the remaining ten contracts do not meet the
16 enumerated criteria. The second category of
17 natural gas contracts include specialized
18 contracts that are flat priced contracts that
19 involve physical delivery and are essentially
20 merchandising tools, as well as contracts that
21 provide a more granule hedging mechanism for
22 market participants. Staff evaluated all of these

1 contracts considering the criteria.

2 Each of the seven natural gas contracts
3 that staff recommends be declared a SPDC is a
4 locational basis contract that prices natural gas
5 at a specific location other than the Henry Hub.
6 These locations in Southern California, San
7 Francisco, Northwest Rocky Chicago, Houston Ship
8 Channel, Waha, and Waha Hub near West Texas, near
9 the New Mexico border.

10 While the specific details may differ,
11 the division's observations and basis for its
12 conclusions are the same for each of these
13 contracts, that is, the prices of these contracts
14 are commonly used as a key source of price
15 discovery for the cash markets and the contracts
16 exhibit sufficient liquidity.

17 Each of these contracts is a key
18 reference price for natural gas at a particular
19 location. The contracts offered additional
20 pricing information not provided by the act of
21 NYMEX and ICE SPDC Henry Hub contracts, that is,
22 they provide critical information about the value

1 of natural gas at a future point in time at a
2 geographic point, each of which has unique supply
3 and demand characteristics.

4 These contracts also have significant
5 open interest in trading value and are widely used
6 by cash market participants for hedging price
7 risks. As an example, I'll consider the ICE So
8 Cal, Southern California financial basis contract
9 which prices natural gas at the Southern
10 California border. It's a major center for gas
11 that flows to Southern California from West Texas.

12 With respect to material price
13 reference, the So Cal contract satisfies the price
14 reference -- the material price reference
15 criterion in the act and in our guidance. The
16 contract represents a delivery location that is a
17 major trading center distribution point and
18 consumption center for natural gas in North
19 America. And the ICE price is referred to on a
20 frequent, recurring basis when entering into cash
21 transactions and when valuing natural gas
22 inventories, production and demand at that

1 location.

2 The So Cal border hub is not directly
3 connected to the Henry Hub by an existing
4 pipeline, and prices at the So Cal point can
5 diverge from the Henry Hub price, reflecting local
6 supply and demand conditions, such that a
7 competitive market price representing the value of
8 natural gas at that location is of much benefit to
9 commercial participants at that location.

10 The contract also has material
11 liquidity. Our analysis of liquidity was multi
12 pronged. We considered the trading volume of the
13 contract, number of trades per day and open
14 interest as indicators of a contract size and
15 potential importance. For the So Cal contract and
16 the other six contracts, we recommend be declared
17 SPDC. We believe that staff found that each of
18 these contracts met these liquidity thresholds.

19 The other ten contracts, natural gas
20 contracts which staff believes should not be
21 declared SPDC include locational basis contracts
22 representing smaller natural gas delivery

1 locations throughout the U.S.

2 There may be reasons why a particular
3 hub is of lesser importance. One reason is that
4 the relevant location is directly connected to the
5 Henry Hub. As a result, the actively traded Henry
6 Hub contract, either on NYMEX or ICE, provides a
7 sufficient indication of the value of natural gas
8 for market participants. Another reason is that
9 there is another hub in that area that is dominant
10 in terms of pricing. In view of these
11 considerations, staff does not believe that these
12 locational basis contracts meet the material price
13 reference standards.

14 In addition, there are several contracts
15 that serve as specialized hedging tools for
16 industry participants rather than serve as price
17 discovery mechanisms. These contracts are
18 generally used to adjust prices that are locked in
19 by hedgers or to modify previously established
20 hedge positions or fine tune delivery obligations.
21 Price discovery usually is based on the NYMEX
22 Henry Hub futures contract.

1 Finally, there are several NGS contracts
2 that are flat price contracts used to determine
3 the price of physically delivered gas at locations
4 in Canada. These contracts do not meet the
5 material liquidity criterion. And in the case of
6 the Alberta contract, the contract does not meet
7 material price references. The ICE cash settle
8 contract is more important to market participants
9 as a pricing reference.

10 In summary, staff has attempted to
11 closely follow the guidance set forth by the
12 Commission in evaluating each contract as a
13 potential SPDC. The full recommendations are set
14 forth in the Federal Registry releases
15 demonstrating our analysis of these particular
16 contracts and an evaluation of the comments raised
17 by -- with respect to the Federal Registry
18 releases. That concludes my presentation. Thank
19 you.

20 CHAIRMAN GENSLER: I want to thank both
21 of you for a remarkable amount of work on this. I
22 just -- for my fellow Commissioners, there's going

1 to be three motions that we'll entertain. The
2 first will be on the seven contracts that you
3 recommended, and then we'll do questions and do
4 the vote. Secondly is on the, I think it's 17,
5 but I might have counted wrong, the natural gas
6 contracts that you're recommending not be SPDC,
7 and we'll see what questions there are. And then
8 thirdly is this climate contract, for some reason
9 there's three votes, but this is, you know, we're
10 learning as we go. So the first thing -- what's
11 that?

12 COMMISSIONER DUNN: Before we get into
13 the specifics --

14 CHAIRMAN GENSLER: Oh, absolutely.

15 COMMISSIONER DUNN: -- I have some
16 general questions to ask of the panel.

17 CHAIRMAN GENSLER: I'm told to actually
18 entertain a motion and then you'd have all the
19 questions, but I can do it either way.

20 COMMISSIONER DUNN: Well, it's not on,
21 per se, it's general questions.

22 CHAIRMAN GENSLER: Right.

1 COMMISSIONER DUNN: If you would.

2 CHAIRMAN GENSLER: Right.

3 COMMISSIONER DUNN: General Counsel
4 Berkovitz, and I ask you this because you're all
5 knowing, at least that's what you tell us when you
6 brief us, but I do know that you've been working
7 on providing technical assistance in both the
8 House and Senate on proposed legislation, and what
9 becomes of ECM's under the proposed legislation
10 that Congress is working on?

11 MR. BERKOVITZ: Under the House bill and
12 the bill that is going -- perhaps will be
13 considered by the Senate if there's a motion to
14 proceed, would -- the category of ECM's would no
15 longer exist. The various exemptions they refer
16 to in the statement would be repealed. But these
17 facilities, these trading facilities would be
18 regulated as swap execution facilities under the
19 legislation. And there would be a principal --
20 core principals applied to -- the swap execution
21 facilities would be required to abide by core
22 principals under the legislation, so the CFTC,

1 under this system contemplated by the legislation,
2 would have comparable, at least comparable
3 regulatory authority, if not some enhanced
4 regulatory authority over these facilities.

5 COMMISSIONER DUNN: Those core
6 principals basically include the 19 that we have
7 for SPDC plus more; is that my understanding, that
8 they're --

9 MR. BERKOVITZ: There's -- I believe
10 there's nine core principals now that apply to
11 ECM's. I believe there would be additional core
12 principals also applied to the swap execution
13 facility. So it would be ECM plus.

14 COMMISSIONER DUNN: So, in essence, as
15 these are approved, then there will be a
16 continuation as you see it in future legislation,
17 but even with a greater amount of oversight?

18 MR. BERKOVITZ: That's correct.

19 CHAIRMAN GENSLER: I want to follow up
20 just because I just want to clarify. And I see
21 David Van Wagner there, so you can tell us, how
22 many core principals are in this swap execution

1 facility? I mean it's more than nine, just to --

2 MR. VAN WAGNER: In the --

3 CHAIRMAN GENSLER: In the Senate
4 version.

5 MR. VAN WAGNER: -- in the Senate
6 version, it's 15.

7 CHAIRMAN GENSLER: Fifteen, so I'm
8 sorry, David Van Wagner is their General Counsel
9 inside of the Division of Market Oversight. But
10 as I understand it, so that the -- the provisions
11 that Chairman Lincoln and Chairman Dodd worked out
12 and released yesterday include 15 core principals,
13 roughly the nine that are in, plus another handful
14 about public reporting. For instance, one of
15 them, this real time reporting, is a key one.

16 I also understand that though the exempt
17 commercial market and the SPDC 2H7 and 2H3 would
18 be repealed, that for one year after the President
19 were to -- if this got to the President and he
20 were to sign it, for one year there would be a
21 transition period where the SPDC regime would
22 still continue for one year; is that correct?

1 MR. BERKOVITZ: That's correct, it would
2 be a one year transition.

3 CHAIRMAN GENSLER: It would be an
4 overlap. And if I might, I would also say, my
5 reference in my opening statement, there still are
6 people that want to find exemptions and loopholes
7 to this swap execution facility language, whereby
8 energy contracts, particularly in natural gas and
9 electricity, are possibly exempted. And frankly,
10 having served in a prior administration when the
11 same sort of debates were going, these exempt
12 commercial markets, which are going to small, and
13 Enron was going to have them, and certain members
14 of the House and Senate were proposing those
15 exemptions, it feels for me like déjà vu when
16 people are suggesting exemption for energy
17 contracts in a very similar way.

18 I hope we can have the discipline and
19 that Congress hopefully will have the discipline
20 to learn from these lessons and not, in essence,
21 repeal the Farm Bill provisions, and then put in
22 its place something that is full of holes.

1 COMMISSIONER DUNN: You're tracking me
2 very well, Mr. Chairman. Maybe I should ask you
3 the questions rather than General Counsel.

4 CHAIRMAN GENSLER: No, I'm just trying
5 to staff Dan.

6 COMMISSIONER DUNN: My understanding
7 that the review of all of these were based upon
8 the quarterly reports that they were required to
9 submit. So I am assuming that this is dynamic.
10 Every time you get a new quarterly report, you
11 will have a division or staff begin to look at
12 these to see if they meet these thresholds; is
13 that correct?

14 MR. SHILTS: Yes, and the Commission's
15 rules require that all ECM's provide these
16 quarterly reports of all trades that exceed a
17 threshold of five trades a day, and there's some
18 additional information that they provide, and
19 that's really kind of a, you know, initial
20 information for us so that we know what's going on
21 in these markets, so that we can start evaluating
22 them if there's, you know, certain contracts that

1 start exceeding the threshold.

2 And it will be an -- and I think
3 Congress anticipated this would be an ongoing
4 evaluation of, you know, contracts that, you know,
5 that we've never looked at as SPDC, now those that
6 may be -- the Commission may decide aren't SPDC
7 today, and even those that may become SPDC, I
8 think there's a process to continue -- to review
9 that. I think it's in the statute that there has
10 to be kind of an annual review, but it's something
11 I think we would do on an ongoing basis, because
12 we do get this information regularly.

13 COMMISSIONER DUNN: I was quite taken
14 with your description of the inner divisional team
15 that was put together to go out to Atlanta to look
16 at ICE's setup. And could you amplify a bit on
17 that, who went, and what you looked at, and how
18 much time you expended on that?

19 MR. SHILTS: Yes, it was pretty much
20 similar to the process that we use when we look at
21 a new exchange. It involved a team leader and our
22 market review group and representatives from

1 General Counsel's office, DCIO enforcement, you
2 know, the kind of -- the usual suspects, the
3 people that have expertise in various aspects of
4 an exchange's operation.

5 It was a pretty thorough review of the
6 rules that they adopted, and we went there and
7 observed, had a demonstration of their market
8 surveillance, trade practice surveillance systems,
9 their ability to, you know, to provide
10 transparency, backup procedures and all, so it was
11 -- it was fairly -- it was an exhausted review,
12 but it's pretty much the same type of review we do
13 if we get a new application from a -- for a DCM.

14 COMMISSIONER DUNN: And for these new --
15 the ECM's that we've all -- would be designated as
16 SPDC, then there has to be follow-up to ensure
17 that they are adhering to those core principals
18 that are in there, and those will be done by
19 RER's, Rule --

20 MR. SHILTS: No, initially we would be
21 working with -- if the Commission decides to
22 accept the recommendations, these would be

1 additional ICE contracts. So as I said, in many
2 -- for many of the core principals, they've
3 already adopted procedures or rules or whatever to
4 come into compliance, so it's basically adopting
5 additional oversight of these other contracts, and
6 that's something we would be monitoring over the
7 next few months to ensure that that do that.

8 And then, ultimately, if they come into
9 -- once they come into compliance, we would, on a
10 regular basis, be evaluating their ability to, you
11 know, conduct self-regulatory requirements and
12 monitor their rules with our Rule Enforcement
13 Review program, just as we would do with any
14 registered entity, any regulated exchange, they
15 would just be added to the list.

16 COMMISSIONER DUNN: Okay, thank you.
17 Those were the general questions that I wanted to
18 hear.

19 CHAIRMAN GENSLER: So do our other
20 Commissioners have general, before I do the
21 motions, and then we'll have questions on the
22 motions, but whatever, Commissioner O'Malia. I'm

1 doing this sort of out of order, but --

2 COMMISSIONER O'MALIA: I'm happy to do
3 it either way. I mean I figure I'll ask my
4 question one way or another.

5 CHAIRMAN GENSLER: Go ahead.

6 COMMISSIONER O'MALIA: Mr. Shilts, as I
7 understand it, none of the 23 gas contracts were
8 determined to have met the price linkage or
9 arbitrage linkage, correct? And all seven of the
10 contracts qualified under material price
11 reference, and all but the Dominion South
12 qualified under the material liquidity, right?

13 As you noted in your statement, some of
14 this criteria is more relevant than others, and
15 clearly, that's born out in these determinations.
16 I have two questions. One of the lessons learned,
17 we've gone through 90 contracts, you've selected
18 seven in this one, we've done one previously,
19 these factors, are they the right factors to be
20 looking at? Obviously, we haven't -- price
21 linkage and arbitrage haven't become relevant, why
22 not?

1 MR. SHILTS: I think the price linkage,
2 there's a couple aspects of your question. The
3 price linkage and arbitrage I think generally go
4 to linked contracts, and I think that the general
5 view was there, if a contract is directly linked
6 to a DCM contract, in a sense, it creates a single
7 market and warrants, you know, oversight. Or on
8 the other hand, you know, you may have a contract
9 that's essentially like another contract, it may
10 not be linked, but through arbitrage, it performs
11 in the same manner, so that warrants oversight
12 also.

13 I think when you look at material price
14 reference, in a sense, you're looking at something
15 that's different. There may not be, and in many
16 cases there wouldn't be a DCM contract to focus
17 on. In effect, the ECM is providing the price
18 discovery market, I think which is what we're
19 saying here.

20 So to the extent that occurs, the
21 linkage doesn't -- it isn't there, as well as the
22 arbitrage, because there's really nothing to

1 arbitrage to. You don't have the active DCM
2 market.

3 With respect to your other question, I
4 whole heartedly agree. There's a lot we've
5 learned through this process. And I think, as
6 Commissioner Dunn said, we didn't really know what
7 the universe would be when we -- when these -- the
8 statute was changed. And a lot of the thinking
9 and rationale for -- is laid out in the Federal
10 Registry releases, and I think it would make a lot
11 of sense for us to go back and possibly see
12 comment either to codify or to put into the
13 acceptable practices some of the analysis and
14 thinking that we've done and request comment as to
15 whether there's other approaches that we could use
16 and other criteria to consider or whatever.

17 And the Commission I believe does have
18 the authority to even establish additional
19 criteria if they so chose. I'm not saying we're
20 recommending that, but I think it's something we
21 could go back and look at. And unless the
22 legislation happens and makes this moot, I think

1 it's something we would -- I mean I agree with
2 you, it's something we'd want to go back and look
3 at, lessons learned.

4 COMMISSIONER O'MALIA: One last
5 question, going forward, we still have a handful
6 of these contracts, I assume we're looking at the
7 same standards and criteria, nothing out of the
8 ordinary coming up?

9 MR. SHILTS: Yes, we're reviewing mainly
10 the electricity contracts. We're using -- looking
11 at the same type of criteria. Again, it's a
12 different market, but the same general standards.

13 COMMISSIONER O'MALIA: Do you have a
14 time table on when that might be ready?

15 MR. SHILTS: We hope to finish those in
16 the next month or two, we've been looking at those
17 pretty actively.

18 COMMISSIONER O'MALIA: Just in time for
19 the legislation to pass?

20 CHAIRMAN GENSLER: Well, yeah, that
21 would be terrific, Rick. Just to clarify, the
22 four criteria that both of you referred to and a

1 number of fellow Commissioner's have, those were
2 in statute, as I understand it; is that correct?

3 MR. BERKOVITZ: That's correct, those
4 are statutory criteria.

5 CHAIRMAN GENSLER: And the first
6 criteria referred to linkage, the second is
7 arbitrage. The linkage was what was the key
8 criteria on the contract last year, the Henry Hub
9 contract; is that right?

10 MR. SHILTS: Well, it was linkage, but
11 also arbitrage. I mean they price very much the
12 same, so --

13 CHAIRMAN GENSLER: So those were the two
14 criteria that were critical to that?

15 MR. SHILTS: Well, and I think also even
16 the price reference, because people -- it's such
17 an active market --

18 CHAIRMAN GENSLER: I see.

19 MR. SHILTS: -- people kind of go back
20 and forth, you know, in terms of pricing between
21 the two.

22 CHAIRMAN GENSLER: But on the seven that

1 you're recommending today, the key criteria is
2 this price -- material price reference?

3 MR. SHILTS: That's correct, yeah,
4 that's the fundamental point.

5 CHAIRMAN GENSLER: I don't know whether
6 I'm supposed to do a motion, but --

7 COMMISSIONER DUNN: I have one more
8 question.

9 CHAIRMAN GENSLER: All right. Everybody
10 can ask questions after a motion happens, too.

11 COMMISSIONER DUNN: Well, I just want to
12 muddy up the water a little bit, Mr. Chairman.
13 The --

14 CHAIRMAN GENSLER: And then Commissioner
15 Chilton does, too.

16 COMMISSIONER DUNN: -- the proposed
17 position limit regulation that just closed, I'm
18 assuming that these will be effected by that if,
19 in fact, the Commission adopts that?

20 MR. SHILTS: No, these wouldn't be
21 included, because what's -- we've looked at the
22 main contracts, WTI crude oil and natural gas,

1 heating oil and gasoline, and the proposal doesn't
2 really address these other types of maybe niche
3 markets. I'm not saying the Commission couldn't
4 consider that, but that wasn't -- these, you know,
5 these aren't really substitutes for the Henry Hub
6 natural gas contract, that kind of goes to the
7 whole point of the material price reference, that
8 they're different pricing something else, so they
9 wouldn't be included with those.

10 CHAIRMAN GENSLER: -- Commissioner
11 Chilton I guess for general questions, and then
12 we'll go to the specific questions that I've
13 already probably asked.

14 COMMISSIONER CHILTON: I'll be happy to
15 move that we accept the staff's recommendations on
16 the seven and then ask a question.

17 CHAIRMAN GENSLER: Great; so having
18 heard a motion that we accept the staff
19 recommendation on the seven ICE financial basis
20 contracts that I know have been outlined, do I
21 hear a second?

22 COMMISSIONER DUNN: I will second.

1 CHAIRMAN GENSLER: All right. Having a
2 motion now being considered by the Commission, and
3 I usually go in order, but why don't we just let
4 Commissioner Chilton continue and ask his
5 question, then I'll go to Commissioner Sommers,
6 because we've kind of done this out of order.

7 COMMISSIONER CHILTON: I'll be brief.
8 For people looking on, I just want to -- you've
9 said this essentially, Mr. Shilts and Mr.
10 Berkovitz, but, you know, some of us, obviously,
11 the Chairman and others support doing more of this
12 additional regulation that I -- an oversight of
13 markets that I've talked about in our opening
14 statement. But we are constricted and confined by
15 the laws, so we couldn't for example, say, even if
16 we had the support among three of the five of us,
17 that we wanted all of these things to come under
18 our oversight.

19 The law simply doesn't allow us that
20 flexibility. So even though we may have
21 individual positions whether or not we support
22 bringing the OTC markets under our regulated --

1 regulatory purview, we can't do that given the
2 constrictions of the SPDC legislation; is that
3 correct?

4 MR. BERKOVITZ: That's correct,
5 Commissioner. The jurisdiction of the Commission
6 is limited in this respect to these exempt
7 commodities, and then the threshold for regulation
8 is making the determination that constitutes
9 significant price discovery contracts.

10 COMMISSIONER CHILTON: Okay. And I
11 don't want to get into a big, long thing here, but
12 I did want to -- as I look around the room, and
13 not only, you know, the folks that are helping
14 Rick, that meet with me this morning, Susan
15 Martin, and David, and Greg, but I notice, you
16 know, Paul Sissio is here, who helped work on this
17 legislation, and John Riley, and you in
18 particular, Mr. Berkovitz, I mean if you hadn't
19 done, when you were working on Capital Hill, the
20 Amaranth investigation, I don't think we would
21 have this legislation and these important
22 regulatory tools, so thank you very much.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner Chilton. I'm kind of going out of
3 order, but Commissioner Sommers.

4 COMMISSIONER SOMMERS: Thank you. I
5 have an I think more general question with regard
6 to what the benefit is for us as a regulator.
7 These additional authorities that we will have
8 over these seven contracts or the eight now that
9 won that we've already determined. The additional
10 regulatory authority or additional regulatory
11 responsibilities that the exchange now has, if you
12 could outline specifically some of the benefits
13 you see in us making this determination.

14 MR. SHILTS: I think in general it, you
15 know, trying to figure out congressional intent,
16 it was that for contracts that are material and
17 interstate commerce, you know, significant price
18 discovery, however you want to refer to it, that's
19 similar to contracts traded on a DCM, that those
20 types of contracts would warrant similar oversight
21 so that the Commission, well, not just the
22 Commission, but that the ECM, the exchange itself,

1 would have responsibility to oversee trading in
2 that market to get information about large
3 traders, to know and monitor activity in the
4 market, to have the tools -- rules in place to
5 deal with issues, you know, emergency provisions
6 and other procedures, if there are problems
7 identified, and I think more importantly just to
8 be monitoring the markets to see if there are
9 problems, because under the -- if they're not a
10 SPDC, there really isn't a self-regulatory
11 oversight responsibility.

12 So I think it goes to ensuring the
13 integrity of the marketplace, because these types
14 of instruments will be viewed similar to those
15 traded on a DCM and would warrant similar
16 regulation and oversight. And the same tools
17 would apply, both for the exchange as well as the
18 CFTC.

19 COMMISSIONER SOMMERS: I think, more
20 specifically, I would be interested in hearing,
21 since you have experience with the one contract
22 that we already made the determination on several

1 months ago, are there specific things that were
2 surprises to you as staff seeing the information
3 that you're now getting on this market or the
4 specific benefits that you're seeing from I guess
5 maybe just particularly that one contract that you
6 have experience with right now?

7 MR. SHILTS: I don't think there's
8 anything specific that was surprising. The one
9 thing we have to work with is that, ICE not being
10 an intermediated market, you know, our IT people
11 have to work with them as far as getting the data
12 in, the large trader data, to do the oversight.
13 But I don't -- we've been -- that contract in
14 particular had been the subject of a lot of
15 comment and, you know, by the press and others for
16 a long time, so it's something we had been looking
17 at for quite a while, so it wasn't just beginning
18 last year when we kind of weren't paying attention
19 to it. So I don't think there's anything, you
20 know, specifically noteworthy to mention.

21 COMMISSIONER SOMMERS: Thank you.

22 CHAIRMAN GENSLER: I guess I'm going to

1 do this in order just to see if there's any
2 questions. So I think I had my basic question
3 answered, but I just want to understand, because
4 we're supposed to make this determination if any
5 of these four criteria met, it's not that all four
6 met, but it's any one of the four has met, Dan.

7 MR. BERKOVITZ: The statute doesn't say.
8 The Commission can determine whether it wants a
9 basis decision on all of them or some of them and
10 the various ways.

11 CHAIRMAN GENSLER: I see. But didn't we
12 publish rules last year before I was part of the
13 Commission, but I think they were rules -- did
14 that give guidance on this?

15 MR. BERKOVITZ: There is guidance;
16 generally it is -- the guidance reflects what I
17 just mentioned, that not all the factors may be
18 present, some of the factors may not even be
19 present. For certain of the factors, such as
20 price link, excuse me, such as price linkage, just
21 that factor alone, the Commission and its guidance
22 indicated may not be sufficient.

1 CHAIRMAN GENSLER: I see, okay. I'm
2 comfortable that if one of the factors is met,
3 that we move forward. I think, as Commissioner
4 Sommers laid out, seven of them have that and
5 that's an important thing for the public to
6 understand. I think that's -- if we move forward,
7 the Commission is affirmatively saying that this
8 material price reference, we're accepting the
9 staff recommendation.

10 I had one other question. In looking --
11 and this may be true of all seven of these, but on
12 the So Cal one, this basis, locational basis,
13 well, I understand from the Federal Register
14 release that ICE, the actual exempt commercial
15 market that might be -- have further regulation,
16 they submitted a letter saying they didn't think
17 it would be a SPDC. So, Mr. Shilts, if you can
18 walk us through, just I think it's relevant to
19 understand that.

20 MR. SHILTS: Yes, that's true. In
21 general, we've just, maybe to mention briefly,
22 some of the comments we got, we did receive

1 comments from FERC and PLATZ. Both of their --
2 the FERC comment was basically saying that it
3 wouldn't appear to conflict, declaring any
4 contract to SPDC wouldn't appear to conflict with
5 their exclusive jurisdiction, so they didn't
6 really opine specifically on the merits.

7 CHAIRMAN GENSLER: Can I just ask Mr.
8 Berkovitz, do you agree that what we're doing here
9 wouldn't effect what we think it their
10 jurisdiction?

11 MR. BERKOVITZ: That's correct, what
12 we're doing here would not effect the jurisdiction
13 of the FERC.

14 CHAIRMAN GENSLER: Great.

15 MR. SHILTS: Yeah, and we received a
16 comment from PLATZ, they basically -- because some
17 of these contracts are ultimately cash settled on
18 PLATZ prices, but again, they provided some good,
19 useful information about the process, but didn't
20 really opine on the merits.

21 We did receive some like from the
22 industrial consumers of America saying that they

1 thought the contracts should be -- actually all of
2 them should be declared SPDC without a lot of
3 elaboration. Both ICE and NGX, as you mentioned,
4 commended, and it -- basically saying they didn't
5 think they should be declared SPDC, but a lot of
6 their focus was saying that the ultimate cash
7 settlement price, whether it be PLATZ or some
8 other third party, was the price that people look
9 to or in that it's a reliable and useful price,
10 and we agree with that, you know, that the
11 settlement price that, you know, using PLATZ or
12 whatever makes sense and it is a reliable price,
13 but I think what we're focusing on is what
14 derivatives do. I mean you're trading -- it's
15 contracts for future delivery, and what do people
16 look to the ICE or these other prices in making
17 determinations about buying and selling in the
18 future. So the fact that ultimately you're going
19 to settle say to a PLATZ price or whatever, we
20 tend to agree, but it didn't -- it didn't really,
21 you know, change our conclusion.

22 CHAIRMAN GENSLER: I see, so it's sort

1 of like saying in the wheat market or in the corn
2 market, until the settlement date, the derivative
3 is a material price reference, but on the day of
4 settlement, of course, the price of corn or wheat
5 in Chicago or at a delivery point is probably, you
6 know, the relevant -- if you have what's called
7 convergence?

8 MR. SHILTS: Right; and another point
9 was -- and this kind of goes maybe a little bit of
10 a peculiarity to natural gas kind of a -- if you
11 look -- it may take a very narrow interpretation
12 of the material price reference and do traders
13 specifically write cash market transactions that,
14 you know, that say we're going to buy or sell at
15 the ICE price. In general, that's not the case,
16 because most of the -- the natural gas industry
17 has evolved such that all pricing is done relative
18 to the Henry Hub, so you would never have a flat,
19 you know, price that's a differential, you're only
20 getting part of it. So our view was not so much
21 that it's actually quoted in an HISTA or some sort
22 of a contract, but is it a basis for making a

1 determination about what you want to buy or sell
2 natural gas at. So that's --

3 CHAIRMAN GENSLER: Thank you. I take it
4 you've read the comments, your Federal Register
5 release talked about this, but that was helpful
6 for me. Commissioner -- any other Commissioners?
7 Commissioner O'Malia.

8 COMMISSIONER O'MALIA: I have a quick
9 question.

10 CHAIRMAN GENSLER: Sure.

11 COMMISSIONER O'MALIA: I have one
12 question when we get to the point where we're --
13 the 16 that we're not --

14 CHAIRMAN GENSLER: Okay. So why don't
15 we -- so we have a motion properly seconded before
16 us to accept the staff recommendation that the
17 seven numerated ICE contracts be determined to be
18 SPDC. If the Commissioners are ready for vote,
19 all those in favor accepting the staff
20 recommendation and finding that these are
21 significant price discovery contracts will say
22 aye.

1 (Unanimous aye.)

2 CHAIRMAN GENSLER: Any no's? Appearing
3 that it is a unanimous five to zero, the staff
4 recommendation is accepted. Do I -- I'd like to
5 entertain a motion on the staff recommendation to
6 issue an order that specifies that the contracts
7 so enumerated. I could list them all, but I have
8 one, two, three, four, five NGX contracts, and I
9 gather it's probably 11 ICE contracts in the
10 natural gas market are not SPDC; do I have a
11 motion?

12 COMMISSIONER DUNN: So moved.

13 CHAIRMAN GENSLER: Any second?

14 COMMISSIONER SOMMERS: Second.

15 CHAIRMAN GENSLER: So discussion.

16 COMMISSIONER O'MALIA: I just have one
17 question. Of these -- Commissioner Dunn brought
18 it up, Commissioner Sommers brought it up; when I
19 implemented the first SPDC contract, they
20 implemented the core principals. Are any of these
21 NGX contracts close on any of the criteria that
22 might trigger them to begin to implement the core

1 principals on any one of those?

2 MR. SHILTS: Some of them are closer --
3 generally closer to kind of some of the thresholds
4 we looked at. And again, as was mentioned, we get
5 the quarterly reports, it's something we would
6 continue to follow, you know, over the summer, in
7 the fall, as we continue to evaluate them. We
8 might come back with a recommendation that a
9 particular contract or two does meet the criteria.

10 COMMISSIONER CHILTON: Without putting
11 you on the spot, can you tell us which ones are
12 the closest to triggering this?

13 MR. SHILTS: Yes, the Alberta basis and
14 the Union Dawn contracts.

15 COMMISSIONER CHILTON: Thank you.

16 COMMISSIONER O'MALIA: What is the
17 Alberta basis contract? If that's the closest,
18 why don't you, if you can, describe it and why you
19 think it is not a SPDC?

20 MR. SHILTS: Well, currently the
21 rational is similar to what I had articulated
22 before for the other contracts, is that it doesn't

1 have -- the contracts aren't generally
2 representing points that are as significant as
3 some of the others, and that there may be ICE
4 contracts or other contracts that at this time are
5 generally the price reference point, and the
6 contracts are also similar to those traded on ICE.
7 So it's kind of which one dominates and becomes
8 the more popular pricing reference.

9 CHAIRMAN GENSLER: And would it be
10 correct, this is a general question maybe for both
11 of you or David Van Wagner I know is close to this
12 legislation, if the Senate, as Senator Lincoln's
13 and Senator Dodd's bill were accepted, and with
14 the House bill somehow became, you know, law, but
15 just reference the Senate bill, would then -- and
16 this kind of goes to Commissioner Chilton's
17 question, would all of these contract, these 11 on
18 ICE, and maybe these five on NGX, we would no
19 longer be debating whether they're significant
20 price discovery contracts, that would be repealed,
21 but would ICE, the ECM, and NGX then have to
22 become swap execution facilities and have these 15

1 core principals or some -- whatever Congress comes
2 out with?

3 MR. BERKOVITZ: Yeah, they are trading
4 facilities, so they make the trading facility
5 definition is currently in either of the -- in the
6 House bill or the bill before the Senate. I don't
7 know jurisdictionally where NGX is located.

8 MR. SHILTS: Yeah, they're located in
9 Canada and Alberta, so I don't know if they would
10 have some other --

11 CHAIRMAN GENSLER: Well, they may be a
12 swap execution facility where we might be able to
13 have some mutual recognition of some foreign
14 regulator, but there would be that issue. But
15 you're saying at least the ICE platform would be a
16 swap execution facility --

17 MR. SHILTS: That's correct.

18 CHAIRMAN GENSLER: -- as you understand
19 it?

20 MR. SHILTS: That's correct.

21 COMMISSIONER CHILTON: Mr. Chairman,
22 just to follow up on that, it would mean, given

1 this hypothetical situation that you described,
2 that staff would, particularly given the
3 constraints of our staff that Commissioner Dunn
4 has talked about, that we would have to prioritize
5 which ones of these things would be the most
6 important for us to look at. But if it passed
7 under the hypothetical situation the Chairman
8 described, they'd all be included, that would be
9 our world, to try and deal with it appropriately,
10 right?

11 MR. BERKOVITZ: That's correct.

12 CHAIRMAN GENSLER: But I think we
13 wouldn't be prioritizing SPDC determinations
14 because we wouldn't be doing the individual, just
15 the platform itself would then be regulated.

16 COMMISSIONER CHILTON: Right.

17 CHAIRMAN GENSLER: And we've actually
18 requested, just so that I share, I mean
19 unfortunately the President put it in the budget
20 that this agency, which is a little over 600
21 people right now, we made an initial estimate for
22 the Congressional Budget Office that we think we'd

1 need to be at about 1,000 people --

2 COMMISSIONER CHILTON: Right.

3 CHAIRMAN GENSLER: -- to sufficiently
4 and adequately perform the duties that the House
5 was considering. The Senate duties might
6 actually, you know, make that even more.

7 COMMISSIONER CHILTON: Right; well the
8 point that I was not eloquently making is that
9 should we not get those FTE's and we are given
10 this responsibility, as far as market surveillance
11 and oversight, you know, the reason that some of
12 these aren't SPDC is not only because we don't
13 have the authority to do it, because they don't
14 trade, because they're only trading one contract
15 or two contracts, there's no volume there, so that
16 wouldn't take a lot to look at, but we'll have to
17 prioritize if we don't get the FTE's, and that was
18 my point, not that we haven't requested it, we'll
19 commend the administration and the chairman for
20 moving forward in that regard.

21 CHAIRMAN GENSLER: Any other questions
22 on these 16?

1 COMMISSIONER DUNN: Yes, Mr. Chairman.
2 Just a point of clarification, one of the public
3 benefits that we get when a SPDC is designated is,
4 we get the large trader reporting information.
5 Can we still get that information through special
6 call for those that are not designated?

7 MR. SHILTS: Yes, we have the legal
8 authority to do that.

9 COMMISSIONER DUNN: Are we doing that?

10 MR. SHILTS: No, we're not.

11 MR. VAN WAGNER: Actually, Commissioner
12 Dunn, just to clarify, we have used the special
13 authority for ECM contracts prior to the Farm
14 Bill. We actually issued a series of special
15 calls to ICE for the Henry contract, which, of
16 course, eventually was the first SPDC contract.
17 So I think we could dust off that special call
18 authority if we wanted to use it for the non-SPDC
19 contracts.

20 CHAIRMAN GENSLER: Thank you, David.
21 Not hearing any further questions, I believe we're
22 prepared to vote. So if so, if I could ask all

1 those in favor accepting the staff recommendation
2 and finding that the enumerated contracts are not
3 significant price discovery contracts can signify
4 by saying aye.

5 (Unanimous aye.)

6 CHAIRMAN GENSLER: Any opposed? Seems
7 like it's five to zero, and the staff
8 recommendation is accepted. I don't know if
9 there's a separate presentation on the climate, so
10 Rick, do you want to tell us a little bit about
11 this climate contract, and then we'll entertain a
12 motion on it.

13 MR. SHILTS: Okay, thank you. The other
14 ECM contract under consideration today is the
15 carbon financial instrument, or CFI contract
16 traded on the Chicago Climate Exchange. The
17 Chicago Climate Exchange was established to offer
18 various environmental products. It's an only
19 North American exchange that offers voluntary, yet
20 legally binding carbon related products. That
21 product is the CFI contract, a proprietary carbon
22 allowance offset instrument which represents 100

1 metric tons of carbon dioxide equivalent.

2 Allowances are issued to omitting CCX
3 members in accordance with their admission base
4 line at ECCX, emission reduction schedule. The
5 CFI is a cash market instrument, not a derivatives
6 contract.

7 The Chicago Climate futures exchange is
8 a subsidiary of the Chicago Climate Exchange that
9 operates as a designated contract market. List
10 derivatives on the CCX, carbon financial
11 instrument, as well as futures and options on
12 nitrogen oxide and sulphur dioxide allowances, and
13 contracts and regional greenhouse gas, Reggie,
14 allowances. In its Federal Register release, the
15 Commission indicated that the CFI contract might
16 satisfy material liquidity and material price
17 reference factors. Based on updated trading data
18 provided by CCX in further analysis, staff does
19 not believe that the CFI should be declared a SPDC
20 now, because it does not appear to be material
21 liquidity or material price reference criteria.

22 The Commission's decision to undertake a

1 review of the CFI was based on the exchanges
2 require quarterly notification, where eight
3 vintages of CFI contracts were combined.
4 Subsequently, staff found that the CCX lists and
5 trades each CFI vintage as a separate product and
6 publishes a vintage specific closing price for
7 each CFI vintage instrument.

8 Based on this information, staff
9 analyzed each individual vintage of the CFI and
10 determined that the number of trades per day only
11 averaged about one. That level of activity is
12 well below the five trade per day reporting
13 threshold that the Commission had established.

14 With respect to material price
15 reference, we note that the CFI is a Chicago
16 Climate Exchange created product. The CCX
17 designed all the parameters of its carbon emission
18 program and it established the rules for
19 membership on the ECM for allowance trading and
20 the creation of offsets. After our analysis, we
21 have concluded that the CCX CFI does not meet the
22 material price reference criteria for a SPDC

1 determination.

2 In that regard, it appears that the CFI
3 prices are not widely used as price references to
4 the U.S. carbon market due to the relative small
5 market share of this program to the overall U.S.
6 carbon market, and given the currently limited
7 potential for the CFI program to be folded into a
8 national mandatory carbon reduction program.

9 This recommendation or conclusion isn't
10 an opinion about the merits of the CCX or its
11 carbon financial instrument, it's just an
12 evaluation of the trading there and how it's used
13 relative to the SPDC criteria. And for the
14 reasons noted above, our recommendation is that
15 the Commission not find that the CCX carbon
16 financial instrument is a SPDC.

17 And before I finish, I just wanted to
18 make one more -- something I forgot to mention
19 before. I wanted to thank the division and others
20 who have spent a lot of time on this, particularly
21 Greg Price, who led the project, and Martin
22 Murray, Susan Nathan, and David Van Wagner, and

1 we'd also gotten a lot of support from the General
2 Counsel's office and enforcement, and with respect
3 to the carbon contract, Irinia Leonova has spent a
4 lot of time on that, who's -- she's basically
5 become one of our emission experts, so I just
6 wanted to thank them before I concluded. Thank
7 you.

8 CHAIRMAN GENSLER: Thank you. And
9 before I entertain a motion, I'm being told that
10 technically I'm going to read the contracts that
11 we just approved and disapproved apparently. So
12 if I gargle any of these, I apologize, and the
13 reading glasses are coming on.

14 But the seven contracts that we
15 recommended and just so voted on, all are ICE, but
16 the first one is ICE, Houston Ship Channel
17 financial basis contract, the second was ICE, Waha
18 financial basis contract, West Texas, third was
19 ICE, Alberta financial basis contract, fourth,
20 ICE, NWP, Rockies financial basis contract, which
21 is in Wyoming, Utah and Colorado. ICE So Cal,
22 which means Southern California border financial

1 basis contract, next is ICE PG and E financial
2 basis contract, which happens to be near San
3 Francisco, and ICE Chicago financial basis
4 contract, those are the seven. And bare with me
5 as I read these others, because it's a long list,
6 but the first 11 or so were ICE. San Juan
7 financial basis contract, ICE, Malin financial
8 basis contract, ICE, Dominion South financial
9 basis contract, ICE, Henry financial basis
10 contract, ICE, Henry financial index contract, a
11 little different.

12 Next is ICE, Henry financial swing
13 contract. That's not like swing dancing, no,
14 okay. Sorry for the press corps there. ICE
15 Permian financial basis contract, ICE TCO
16 financial basis contract, ICE zone six New York
17 financial basis contract, ICE TETCO M3 financial
18 basis contract. You can see if the public is
19 listening, how technical this is. And ICE
20 NGPLTXOK, is that Texas, okay, Texas, Oklahoma
21 financial basis contract? Five contracts on the
22 NGX exchange there.

1 AECO basis contract, was that the
2 Alberta one you referred to earlier? Their Union
3 Dawn basis contract, their AECO fixed price
4 contract, which I gather is Alberta, their Union
5 Dawn fixed price contract, and something called
6 their 7A index contract. And I think I've just
7 been -- officially read that into the record. If
8 I could consider a motion or entertain a motion to
9 accept the staff recommendation to issue an order
10 that the carbon financial instrument offered by
11 the Chicago Climate Exchange is not a significant
12 price discovery contract.

13 COMMISSIONER DUNN: So moved.

14 CHAIRMAN GENSLER: Second; the motion
15 being properly moved and seconded, any questions
16 from the Commissioners? I just had one, which
17 was, Rick, you said there is one -- there's eight
18 individual contracts and there's, on average, one
19 trade a day; what's the total open interest of
20 these, if anyone?

21 MR. SHILTS: I don't -- I can ask
22 Irinia. In a sense, it's kind of -- open interest

1 is kind of a concept that doesn't completely apply
2 because it's not a derivatives market, so what's
3 really outstanding are the number of these
4 instruments.

5 CHAIRMAN GENSLER: Oh, I get it, I see.

6 MR. SHILTS: Not like --

7 CHAIRMAN GENSLER: So this was not a
8 derivatives marketplace. I remember when we first
9 put this out, some people were asking why did we
10 put the determination out was because it's an
11 exempt commercial market apparently.

12 MR. SHILTS: They have filed under 2H3
13 an exemption for this contract as part of their
14 exempt commercial market. And under the Farm
15 Bill, it doesn't differentiate between say
16 derivatives and cash instruments as potential
17 SPDC. It's a little strange.

18 CHAIRMAN GENSLER: So because they are
19 an exempt commercial market, though these are not
20 derivatives, it is an exempt commercial market
21 because they had come forward years ago and become
22 an exempt commercial market?

1 MR. SHILTS: Well, they don't have to
2 rely on the 2H3 exemption because it's a cash
3 instrument, but they have chosen to do that.

4 CHAIRMAN GENSLER: But that's why we put
5 it out, because there was more than five a day,
6 but then upon further review, it's only -- there's
7 eight separate things. But you said it doesn't
8 have the material liquidity, it doesn't have the
9 material price reference?

10 MR. SHILTS: Correct.

11 CHAIRMAN GENSLER: Any questions, fellow
12 Commissioners?

13 COMMISSIONER CHILTON: I want to --
14 thank you. I just want to reiterate something you
15 said earlier, but particularly with regard to this
16 contract. We can review this all the time,
17 Commissioner Dunn asked about quarterly, but say,
18 for example, Congress did approve sometime later
19 this year an energy bill, and even if it didn't
20 include cap and trade, people may want to go and
21 use the CCX contract, and we could see a spike in
22 volume, so we don't have to wait for an annual

1 review, we could make a determination later on
2 that it is a SPDC.

3 MR. SHILTS: Yes, and again, that's the
4 purpose of getting the data on a quarterly basis,
5 so if something does change, we can react to that.

6 COMMISSIONER CHILTON: Okay. And the
7 other thing, Mr. Shilts, I don't know if you
8 wanted to comment on this, but earlier when we
9 were talking about the seven, you said that, you
10 know, PLATZ was a reliable pricing publication,
11 and I just wanted to clarify. I mean some people
12 thing, and forget about PLATZ in general, but
13 don't think that that may be the case, that these
14 things are debatable, but for us, they are things
15 that are used as -- in the contracts, they are
16 published and people use them. So I just wanted
17 to make clear, and feel free to comment, that
18 we're not vouching for the authenticity of these
19 prices that are put out there; is that correct?

20 MR. SHILTS: Yeah, I wasn't trying to
21 make any judgment about the, you know, the PLATZ
22 prices in particular, it was just that what they

1 were focusing on there was many of the comments
2 about -- that it's the PLATZ prices. The ultimate
3 settlement price that's the --

4 COMMISSIONER CHILTON: It's what people
5 --

6 MR. SHILTS: -- reference, and we were
7 saying, well, no, for derivatives, you're really
8 looking for the future.

9 COMMISSIONER CHILTON: And we're not
10 saying that they're not.

11 MR. SHILTS: Yeah.

12 COMMISSIONER CHILTON: Thank you.

13 CHAIRMAN GENSLER: Okay. Not hearing
14 any further questions, or maybe there is.

15 COMMISSIONER DUNN: Mr. Chairman, I
16 just, again, wanted to thank the staff for the
17 good job that they had done. When you put all the
18 material together, it's a stack about this high,
19 and it took a great deal of effort by a lot of
20 people, and I greatly appreciate the efforts of
21 the staff to give us good information so that we
22 can make correct decisions.

1 CHAIRMAN GENSLER: I'll thank you after
2 the vote, but I don't mean it -- probably. But
3 having a motion, duly seconded, all those in favor
4 of accepting the staff recommendation that the
5 climate change contract not be considered a
6 significant price discovery contract under the
7 Farm Bill guidance, say aye.

8 (Unanimous aye.)

9 CHAIRMAN GENSLER: Any opposed? The
10 motion carried five to zero. I, too, wanted to
11 thank the staff for all of their work. I mean it
12 probably is correct that when this was first
13 brought forward in the Farm Bill in 2008, and then
14 a rule that came after it, that one was not
15 envisioning this many contracts, but you've sorted
16 through part of it, we will have 17 to go, right,
17 on the electricity side, and I heard Mr. Shilts,
18 you said in the next month or two, so this
19 Commission will be delighted because it may be
20 that the President is signing into law a major
21 reform that we're going to need to focus on, so I
22 thank you.

1 I also want to thank my fellow
2 Commissioners, because I know each and every one
3 of these contracts have been through your offices,
4 and I thank you for indulging me on doing this in
5 the public forum, but I think the more we do this,
6 and I think if the President does sign in new
7 financial reform legislation, that we're going to
8 use this format sometimes just to learn, because
9 we're going to have probably 20 plus rules that
10 we're going to be, you know, asked to do,
11 sometimes in conjunction with the SEC, sometimes
12 alone, sometimes in coordination and consultation,
13 so we might use this format just to learn a lot as
14 we're going through that rule process. But I want
15 to thank you. I don't know if anybody else -- so
16 not hearing any further business, I'd like to
17 entertain a motion to adjourn the meeting.

18 COMMISSIONER DUNN: So moved.

19 CHAIRMAN GENSLER: Second, all in favor,
20 aye.

21 (Unanimous aye.)

22 CHAIRMAN GENSLER: The fourth unanimous

1 vote, thanks.

2 (Whereupon, at 11:03 a.m., the
3 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
3 certify that the forgoing electronic file when
4 originally transmitted was reduced to text at my
5 direction; that said transcript is a true record
6 of the proceedings therein referenced; that I am
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8 any of the parties to the action in which these
9 proceedings were taken; and, furthermore, that I
10 am neither a relative or employee of any attorney
11 or counsel employed by the parties hereto, nor
12 financially or otherwise interested in the outcome
13 of this action.

14 /s/Carleton J. Anderson, III

15

16

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1 ERRATA SHEET FOR THE DEPOSITION OF
2 _____
3 Case Name: _____

4 CORRECTIONS

5	Pg.	Ln.	Now Reads	Should Read	Reasons:
6	_____	_____	_____	_____	_____
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1 To the Witness:

2 Please note any errors and the
3 corrections thereof, on this errata sheet. Any
4 change or correction should have a reason. It may
5 be a general reason, such as "To correct
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7 or "To conform with the facts." Once you have
8 completed the sheet, signed and dated it, return
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11 errata sheets among the parties.

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